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The American Legion

For God and Country

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August 1, 1984

Honorable J. Kenneth Robinson
U.S. House of Representatives
Permanent Select Committee on Intelligence
H-405, The Capitol
Washington, DC 20515

Dear Congressman Robinson:

As the House of Representatives prepares to vote on the FY 85 Intelligence Authorization, H.R. 5399, The American Legion would like to express its views relative to section 107 of the bill. As you know, section 107 would prohibit the use of any funds, authorized under the act, to support the Nicaraguan Contra's in their fight to establish a democratic government in their country.

In the view of The American Legion there are compelling legal arguments why section 107 should be deleted from the bill. And, as the enclosed documents demonstrate, U.S. efforts to assist the Contras are clearly legal. The simple and undeniable fact is that the dire predictions of the consequences of a Sandinista takeover in Nicaragua have come to pass. In fact, in many instances the excesses of the Sandinista's have surpassed those of the intolerable Sanoza dictatorship.

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While the legal and moral considerations, in our view, uphold continued support for the Contra's, there is an extremely important issue that has yet to be addressed by the Congress in its deliberations. This issue is the social and economic impact on the United States resulting from further communist takeovers in Central America. The historical evidence indicates that when communists take over a country at least 10 percent of its population flees. Further communist takeovers in Central America will send an unimaginable surge of immigrants into the United States easily exceeding two million people, exacerbating an already burdensome immigration problem. This inflex of immigrants will also place a severe strain on available social services and increase competition for American jobs in the south and southwest portions of the United States.

While some may choose to ignore this aspect of communist aggression in Central America they will be hard pressed to deny that the United States has an economic attraction and record of compassion toward refugees unmatched by any other country in this hemisphere. In addition, our proximity to Central America and the ease with which entry can be gained, will make the United States the destination of choice for the majority of those fleeing communist takeover.

Congressman, for these reasons The American Legion seeks your leadership in deleting section 107 from the FY 85 Intelligence authorization. As always, your consideration of the views of The American Legion is appreciated.

Sincerely,

E. Philip Riggin, Director
National Legislative Commission

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In a speech to the White House Central American Out-Reach Working Group on April 25, 1984, Professor John Norton Moore presented a four-part analysis demonstrating that U.S. actions in Central America are legal under international law. Professor Moore is on the faculty of the University of Virginia's law school and is a noted expert on international law. Excerpts from Professor Moore's speech follow:

My discussion this afternoon will center on what I believe to be the core legal issue in the Central American conflict: that is an appraisal of that conflict under international law—particularly the United Nations Charter and the Organization of American States system.

My discussion will have four parts: (1) a brief general framework of the applicable structure of international law; (2) a discussion of the factual setting in Central America legally relevant for discussion; (3) an application of the legal structure to the facts, and finally, the threat to the international legal system of a pervasive double standard in action and appraisal.

Let me turn first to a brief general framework of the applicable structure of international law. The central tenet of modern international law on use of force is that nations will not use force aggressively to threaten the territorial or political integrity of neighboring states. But if such an attack does occur, then nations have a right of individual and collective defense to take those measures necessary and proportional to respond to the threat.

If we look first at the United Nations Charter, there are really only two articles of fundamental importance for appraising the Central American conflict; one of these is Article 2, paragraph 4. That article specifically says that all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations. That is the basic prohibition against the use of force which stems back to the old Kellogg-Briand pact of 1928—a major normative advance in the history of international law.

The other side of this equation that must be read with Article 2(4) is Article 51 of the United Nations Charter, that nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. That, of course, is the other side of this fundamental equation which unequivocally establishes the right of defense.

If we are to shift to the relevant treaties of the [illegible] first a couple of articles from the Rio Treaty, which again is the equivalent of NATO for this hemisphere. Under Article 1, the high contracting parties formally condemn war and undertake in their international relations not to resort to the threat or use of force in any manner inconsistent with the provisions of the Charter of the United Nations. That is the parallel to Article 2, paragraph 4 in the United Nations Charter.

Similarly we find the exact parallel to Article 51 of the right to effective defense. It is contained in Article 3 of the Rio Treaty; the high contracting parties agree that an armed attack by any state against an American State shall be considered as an attack against all the American States and consequently, each one of the said contracting parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the United Nations Charter. On the request of the State or States directly attacked, and until a decision of the organ of consultation of the Inter-American system, each one of the contracting parties may determine the immediate measures which it may individually take in fulfillment of the obligation.

If we shift and look to the second of these major treaties of the OAS system, that of the Charter of the OAS, we find again the same parellelism. Under Article 18, no state or group of states has the right to intervene directly or indirectly for any reason whatever in the internal or external affairs of any other state. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the state or against its political, economic and cultural elements.

Similarly, under Article 21, the American States bind themselves in their international relations not to have recourse to the use of force except in the case of self-defense in accordance with the existing treaties or in fulfillment thereof. In that article you begin to shift to the other side of the equation; that of the right of effective defense. We find that right spelled out clearly in Articles 22, 27 and 28 and moreover, we find all of the rights under the United Nations Charter protected under Article 137. I will spare you a reading of all of the details of those articles but the point is that the right of effective defense, particularly action pursuant to and justified by the Rio Treaty is clearly recognized by the Organization of American States Charter.

Now let's shift to the second point, a brief discussion of the factual setting in Central America that is locally relevant for decision. First, let's look generally at the trends in Central America and the Caribbean setting reflecting a substantial Soviet and Cuban buildup over the decade of the 1970s.

Among other evidence of the other information I've talked about, Chapter 6 of the Kissinger Commission report does a superb job in bringing it together. But there are many other sources. If we look to the report of the Permanent Select Committee on Intelligence of the House, May 13, 1983, it concludes as follows:

...the committee must limit its treatment of Cuban and Nicaraguan aid to [illegible] it has reached. Such judgments constitute a clear picture of active promotion for revolution without frontiers throughout Central America by Cuba and Nicaragua. The insurgents are well-trained, well-equipped with modern weapons and supplies and rely on the sites in Nicaragua for command and control and for logistical support. The intelligence supporting these judgments provided to the committee is convincing. There is further persuasive evidence that the Sandinista government of Nicaragua is helping train insurgents and is transferring arms and financial support from and through Nicaragua to the insurgents. They are further providing the insurgents bases of operations in Nicaragua. Cuban involvement, especially in providing arms, is also evident.

What this says is that contrary to repeated denials of the Sandinistas, Nicaragua is thoroughly involved in supporting the Salvadoran insurgency. If we look to the report again from the House side on the amendment to the Intelligence Authorization Act for 1983, we find this quote:

> Subsection A, referring to the House bill, states a Congressional finding that activities of the governments of Cuba and Nicaragua threaten the independence of El Salvador and threaten to destabilize the entire Central American region and that the governments of Cuba and Nicaragua refuse to cease those activities.

If we turn to the Intelligence Authorization Act for Fiscal Year 1984, we find the following Congressional finding in Section 109:

> By providing military support, including arms, training, logistical command and control and communications facilities, to groups seeking to overthrow the government of El Salvador and other Central American governments, the Government of National Reconstruction of Nicaragua has violated Article 18 of the Charter of the Organization of American States which declares that no state has the right to intervene directly or indirectly for any reason whatsoever in the internal or external affairs of any other state.

These are just a few indications of the on-going armed attack against El Salvador from Nicaragua and Cuba and the way that information has been broadly accepted at the present time.

Let's go to the third point which is a very brief one, the application of the legal structure to the facts. The actions of Cuba and Nicaragua constitute an armed attack against El Salvador. These countries have participated heavily in organization, supply, finance, command and control, among other activities. That is a sustained and determined armed attack seriously threatening the political integrity of El Salvador. Those actions violate Article 2, paragraph 4 of the United Nations Charter, Article 1 of the Rio Treaty and Articles 18 and 21 of the Organization of American States Charter.

In that setting, the U.S., acting in conjunct n with El Salvador and other concerned states, is entitled in response to take action which is necessary and proportional for effective defense. Article 51 of the United Nations Charter and Article 3 of the Rio Treaty, and Articles 21, 22, 27 and 28 of the OAS Charter, make clear that such actions in response to an armed attack are permissable. Indeed, one thing that has not been noticed is that under Article 3 such a defensive response is obligatory. If there is an armed attack on an American state, there is an obligation of the United States to go to the assistance of the state that has been attacked.

But if these treaties have any meaning whatsoever, if a collective defense agreement is other than a scrap of paper, then there is a legal obligation under Article 3 to aid the government of El Salvador if attacked by an external armed attack.

That assistance, whether it is directed with the presence of U.S. combat forces, whether it is assistance that takes the form of assistance to the Contras, or whether it is assistance that takes the form of mining of harbors, is perfectly lawful under Article 51 of the United Nations Charter and Article 3 of the OAS Charter.

Let me simply indicate a few misperceptions about the law that we've heard around the town frequently over the last year or so. One of those is that the United States actions in Central America violate Article 18 on the OAS Charter; that basic non-use of force, non-intervention provision that I indicated to you. If there was nothing else to the setting that would be accurate. The problem, however, is in fact that there is an on-going armed attack against El Salvador and neighboring states. The United States is responding in defense and to make this argument is simply to take Article 18 completely out of context without any understanding of the fundamental tenets of the United Nations Charter and the OAS system: that you don't use force aggressively but you can use force in response to an armed attack.

The second falacy is the notion that both the United States and Nicaragua and Cuba are engaged in the same game; that we are all engaged in trying to alter governments by the use of force or that we are all engaged in state terrorism. Well, that is one myth that I tell my students is a classic example of the fallacy of the even-handed cop-out It simply confuses the basic point again — the basic purpose behind th United Nations Charter and the OAS system — that is illegal to attack and permissable to respond in defense. If we didn't have that structur it would be impossible to have any kind of an effective world order in the world today.

A third misperception is that mining of the harbors is illegal; that b cause third states have been brought in or mines are involved that the is some violation of international law. Mine warfare is a classic par of naval warfare and a general right under Article 51 of the United Na tions Charter in defense against an armed attack. It is indeed a part of an effort to be effective in dealing with a serious, sustained, on-going armed attack and there is certainly nothing in international law that prohibits a reasonable mine warfare effort as part of a necessar and proportional response.

Let me move very briefly to the last point, a threat to the international system, of a pervasive double standard in action and appraisal. This problem is a complex one but I think there are two principal elements. The first of those is that the Soviet Union and its client states while seeking to hold others to standards of law violate those standards at will.

The second component of this problem is not wholly unrelated to the first and I may be slightly unfair in stating this but it seems to me it's a real problem. It's what I would call a critical mind set which believes the worst of any United States or any other Western government and which holds America or Western governments as sufficiently strong to be criticized and condemned combed with a post-Vietnam setting which traumatized any use of United States or Western European power.

Unlike totalitarian societies we have a strong mind set against using force and we encourage, as we should, free debate. But when this is taken to extreme, the resulting standard is profoundly harmful in the deadly serious struggle for freedom, human rights and an end to war. In short, no law can survive a blatantly one-sided applicability in the face of a persistent totalitarian threat to the system itself.